Supreme Court, U.S.
FILED
07 10 18 OCT 9 - 2007
OFFICE OF THE CLERK

83

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
RONALD GILGALLON, EILEEN GILGALLON
SHAWN GILGALLON – PETITIONER
V.
THE COUNTY OF HUDSON, ROBERT JANIZEWSKI, FRANCIS DELEONARDIS, MARK MORCHEL, MICHAEL CIFELLI, THE BOARD OF CHOSEN FREEHOLDERS, NEIL CARROL, VINCENT ASCOLESE, NEPTALIA CRUZ, WILLIAM BRAKER, NIDIA DAVILA-COLON, WILLIAM O'DEA, ALBERT CIFELLI, SILVERIO VEGA, MAURICE FITZGIBBONS, CONNELL FOLEY LLP, JOHN P. LACEY, LABOR MANAGEMENT CONCEPTS INC., JOHN MONROE, STATE OF NEW JERSEY, JOSEPH TRAPP, and ABC CORPORATIONS 1-10 (a fictitious corporation) and JOHN and MARY DOES 1-10 (fictitious persons)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY AND THE COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

RONALD GILGALLON
206 7TH STREET
HARRISON, NEW JERSEY 07029
570-828-7978

QUESTIONS PRESENTED

1. Can the District Court issue a permanent injunction pursuant to the Re-Litigation exception to the Anti-Injunction Act if the claim sought to be enjoined was never previously decided by a Federal Court, and, are the Courts obliged to demonstrate that the issue or claim was previously decided?

2. Is the District Court required to make findings of fact and correlate them with conclusions of law in support of its opinion pursuant to Fed. R. Civ. P. 52, and is the Appellate Court required to make an assessment of the District Court's findings, or the lack thereof, in its own opinion?

3. Does a permanent injunction issued pursuant to the Re- Litigation exception to the Anti-Injunction Act by the United States District Court enjoining a party from pursuing claims in New Jersey's Superior Court violate the party's right to due process if, in fact, the Court cannot satisfy any exceptions to the Statute 28 U.S.C.A. 2283?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

APPENDIX	a
TABLE OF AUTHORITIES . .	b, bb
OPINIONS BELOW/	
FEDERAL COURT CASES .	c
JURISDICTION . . .	d
CONSTITUTIONAL &	
STATUTORY PROVISIONS .	e
PRELIMINARY STATEMENT .	1, 4
LEGAL ARGUMENT . . .	5, 16
CONCLUSION	17

EXHIBITS

A. OPINION JULY 20, 2007	1, 2
B. OPINION JUNE 19, 2007	3 - 7
C. OPINION JULY 10, 2006	7-17
D. OPINION FEBRUARY 23, 2006	18-24
E. OPINION JANUARY 4, 2006	25-36
F. OPINION JANUARY 31, 2001	36-49

TABLE OF AUTHORITIES

CASE LAW:

Amaglamated Clothing Workers v Richmond Bros, 348 U.S. 511, 515, 516 (1955) . . 5

Armstrong v Manzo, 380 U.S. 545, 552, 85 S. Ct 1187, 1191 (1965) . . . 13

Atlantic Coast line R.R. Co. v Locomotive Engineers, 398, U.S. 281, 287 (1970) . . . 4

Blaisdell Lumber Co v Holton, 242 N.J. Super 98, 102 (App Div 1990) 8

Chick Kam Choo v Exxon Corp, 486 U.S. 140, 147-48 (1988) 2, 3, 12

Curtis v Finnerman, 83 N.J. 563, 570 (1980) . 8

Kenwood Assoc. v Bd of Adj of Englewood, 141 N.J. Super 1 (App Div 1976); . . 8

Kolanovic v Gida, 77 Supp 2d 595, 601 (D.N.J. 1999) 4, 12

Mathews v Eldridge, 424 U.S. 319, 333, 96 S Ct 893, 902 (1976); 13

National R.R. Passenger Corp. v Pa. R.R. Pub Util. Comm, 342 F3d 242, 255 (3rd Cir 2003). . . 2

Rosenblitt v Zimmerman, 166 N.J. 391 (2001). . 4, 12

State v Singletary, 165 N.J. Super 421, 424-25 (App Div), Certif Denied, 81 N.J.50 (1979); . 8

Texas Commerce Bank Nat'l Assn v Florida, 138 F 3d 179, 182 (5th Cir 1998) . . 12

Wertlake v Wertlake, 137 N.J. Super 476, 485-86 (App Div 1975) 8

STATUTES

28 U.S.C.A. 2283 . . . . . .
2, 5 1 Stat 76 4

ACTS:

Judiciary Act of 1789 4
Anti-Injunction Act . . . 2, 3, 4, 6, 12

FEDERAL RULES OF CIVIL PROCEDURE

Fed R Civ P 52 . . . . . 6, 7

OTHER

Wright, Miller and Cooper, Federal Practice and Procedure, 4226 (Supp 1977). . 3, 8, 9

Brochin & Sandler, Appellate Review of Facts in New Jersey Jury and New Jersey Cases, 12 Rutgers Law Rev 482 (1947), . . 9

Conford, Findings of Fact and Conclusions of Law, 92 N.J.L.J. (1969) . . . 9

CONSTITUTIONAL AND STATUTORY PROVISIONS

STATUTES: 28 U.S.C.A. 2283 (I STAT 76)

CONSTITUTION FOURTEENTH AMENDMENT (DUE PROCESS)

RULES: FEDERAL RULE OF PROCEDURE 52

PRELIMINARY STATEMENT

The United States District Court failed to make any findings of fact concerning petitioners' argument of spoliation of evidence against the County of Hudson pursuant to Fed R Civ P. 52. On appeal, the Third Circuit failed to address the petitioner's arguments concerning this issue, and subsequently it failed to make any findings of fact.

The petitioners filed a complaint in New Jersey's Superior Court. The petitioners alleged that their former attorneys engaged in legal mal practice during an action filed in the United States District Court under docket number 00-591. Shortly thereafter, the petitioners filed a motion to amend the complaint to include the allegation of spoliation of evidence against the County of Hudson in New Jersey and its corporate counsel, Michael Dermody. The newly named defendants filed a motion for summary judgment. The motion was denied. Rather than appeal the decision in State Court, the defendants sought relief in the United States District Court. The motion was filed under docket number 00-591. The defendants argued that the issue of spoliation of evidence had been previously decided during civil action 00-591. The Court issued its decision. The petitioners were enjoined from pursuing claims against corporate counsel, Michael Dermody pursuant to the relitigation exception to the Anti-Injunction Act. The Court did not make any findings of fact concerning the issue of spoliation of evidence. Additionally, the Court decided not to include the County of Hudson in the order because they were not a party in civil action 00-591.

After the District Court order had been issued, the New Jersey Superior Court ordered discovery. The discovery process yielded newly discovered evidence that solidified the allegations of spoliation of evidence. The petitioners filed a motion for leave to amend the complaint to include this newly discovered evidence. Rather than file a motion for summary judgment, the defendants filed a second motion in the United States District Court. Once again, they asked the District Court to enjoin the petitioners from pursuing the claim of spoliation of evidence in New Jersey's Superior Court pursuant to the relitigation exception to the Anti-Injunction Act. However, this time the defendants filed the motion under docket number 02-5948. Obviously, dissatisfied with the decision in the earlier court proceeding not to include the County of Hudson, the defendants filed a lateral application before a different judge.

An evidentiary hearing was held on November 28, 2005. The petitioners argued the District Court had already decided the matter concerning the County of Hudson. They argued that civil action 02-5948 had absolutely no relationship with the allegations concerning civil action 00-591 filed in New Jersey's Superior Court. Despite this information, the Court issued a permanent injunction against petitioners from pursuing any allegations against the County of Hudson or its' agents in any Court. The order was issued under civil action 02-5948.

In response, the petitioners filed a motion for reconsideration. The motion was denied. The Court did not make any findings of fact that the allegation of spoliation of evidence claim had been previously

decided in either civil action 00-591 or 02-5948.

After the orders were issued, the petitioners modified the State Court complaint. The removed all the allegations against the County of Hudson except the spoliation of evidence during civil action 00-591 claim. The petitioners then filed a new motion for leave to amend the complaint.

The defendants responded by filing a third motion in the United States District Court. Once again, the motion was filed under docket number 02-5948.

The defendants asked the Court to hold the petitioners in contempt of the order issued on January 4, 2006 enjoining them from pursuing claims against Hudson County in any Court. In response, the petitioners withdrew the allegations against Hudson County pending appeal. Despite the withdrawal, the District Court found the petitioners to be in contempt of its order. The Court would later order the petitioners to pay $35,000 in legal fees and costs to defendants.

The petitioners appealed the orders issued by the United States District Court. The Third Circuit denied the appeal. The Court ignored petitioners' argument that the District Court failed to make any findings of fact concerning the spoliation of evidence issue being previously decided. In fact, the Circuit Court failed to make any findings of fact to support its own order.

The petitioners argue that it is not appropriate to avoid unpopular decisions by ignoring arguments presented to it especially if the action violates a parties right to due process in a State Court proceeding. The permanent injunction issued by the

District Court clearly violates the anti-injunction act, as the allegation of spoliation of evidence against the County of Hudson was never previously decided.

The petitioners filed a motion for an en banc hearing. The motion was denied and the Appellate Court did not address the District Court's failure to make findings of fact on the issue of spoliation of evidence involving Hudson County. It is for this reason that the petitioners file for a writ certiorari.

LEGAL ARGUMENT

The District Court and The Appellate Court Have Violated 28 U.S.C.A. 2283 (1 Stat 76)

The petitioners filed a complaint against the County of Hudson in New Jersey's Superior Court. The complaint alleged that the County of Hudson engaged in spoliation of evidence during an earlier Federal proceeding in the United States District Court for the District of New Jersey.

Prior to filing the complaint in New Jersey's Superior Court, the petitioners had two complaints dismissed in the United States District Court for the District of New Jersey.

The complaints were filed under docket 00-591 and 02-5948. The complaint under docket number 02-5948 was presided over by Judge Dennis Cavanaugh. The complaint under docket number 00-591 was presided over by Judge William Bassler. The complaint filed in New Jersey Superior Court alleges that the spoliation of evidence occurred during civil action 00-591.

The defendants in the State action moved for summary judgment. The motion was denied. Rather than appeal this decision in State Court, the defendants petitioned the United States District Court for relief. They also asked the District Court to issue a permanent injunction against the petitioners from pursuing claims against a Michael Dermody and the County of Hudson. The petition was filed under docket number 00-591. Judge William Bassler issued an order partially granting the request (G).

The Court enjoined petitioners from pursuing allegations against Michael Dermody but not the County of Hudson. The order was issued under the relitigation exception of the Anti-Injunction Act.

After discovery in the State Court proceeding the petitioners modified their complaint and they filed for leave to amend it. The defendants immediately filed another petition with the District Court to enjoin the petitioners from proceeding with claims against Hudson County in the State Court under the relitigation exception to the Anti-Injunction Act. However this time the application was filed under docket number 02-5948. Judge Dennis Cavanaugh issued a permanent injunction against the petitioners from proceeding against the County of Hudson with any claims in any Federal or State Court (E).

The order issued on January 4, 2006 violates 28 U.S.C.A. 2283. "A Court of the United States may not grant an injunction to stay proceeding in a State Court except as expressly authorized by an act of Congress; or when necessary in aid of its jurisdiction or to protect and effectuate its judgments". 28 U.S.C.A. 2283, the third exception is known as the "relitigation exception". National R.R. Passenger Corp. v Pa. R.R. Pub Util. Comm, 342 F3d 242, 255 (3rd Cir 2003). The relitigation exception was designed to allow Federal Courts to prevent State Courts from deciding an issue that was previously decided in Federal Court. Chick Kam Choo v Exxon Corp, 486 U.S. 140, 147-48 (1988).

During a Show Cause hearing on November 28, 2005, the petitioners provided clear and concise evidence demonstrating that the allegation of fraudulent concealment or spoliation of evidence had never been previously decided during civil action 00-591. They also argued that the question was never previously decided by Judge William Bassler (H). Despite this information, the Court issued a permanent injunction pursuant to the relitigation exception to the Anti-Injunction Act on January 4, 2006 (E).

The Court never indicated how it determined that the spoliation of evidence allegation was previously decided in civil action 00-591. A review of the earlier opinion demonstrates that indeed, the issue was never previously decided (F). Chick Kam Choo emphasized that claims must be actually litigated in Federal Court to qualify for the relitigation exception. Chick Kam Choo, 486 U.S. at 148. Chick Kam Choo has been interpreted by commentators Wright, Miller and Cooper as requiring a narrow reading of the relitigation exception.

"There can be no Federal injunction against State Court proceedings based on a claim preclusive or issue preclusive effect of a formal judgment unless the judgment has actually decided the claim or issue in question. It requires an assessment of the precise state of the record and of what the earlier order actually said". Wright, Miller and Cooper, Federal Practice and Procedure, 4226 (Supp 1977). The District Court made no such assessment.

The Statute was one of the first passed by Congress. Congress passed the Anti-Injunction Statute in 1793. One "Supreme Court" was created by the Constitution and Congress was given power to create other Federal Courts. In the first Congress this power was exercised and a system of Federal trial and Appellate Courts with limited jurisdiction were created by the Judiciary Act of 1789; 1 Stat 76; Atlantic Coast line R.R. Co. v Locomotive Engineers, 398, U.S. 281, 287 (1970). While the lower Courts were given certain powers in the 1789 Act, they were not given power to review directly cases from State Court and they have not been given such powers since that time. The District Court of New Jersey and the Appellate Court of the Third Circuit are setting a dangerous precedent for accepting cases that are clearly within the jurisdiction of the State Court. As a matter of fact, the United States Courts do not even recognize an allegation of spoliation of evidence as a separate tort if detected after a final judgment has been entered and time has lapsed, Kolanovic v Gida, 77 Supp 2d 595, 601 (D.N.J. 1999). Although New Jersey Courts take the same position on a spoliation of evidence allegation, they will allow a fraudulent concealment claim to be maintained. Rosenblitt v Zimmerman, 166 N.J. 391 (2001).

On its face, the present act is an absolute prohibition against enjoining State Court proceedings unless the injunction falls within one of three specifically defined exceptions. The Supreme Court has held, "The Anti-Injunction Act is not a statute conveying broad general policy

for appropriate ad hoc application, legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions." Amaglamated Clothing Workers v Richmond Bros, 348 U.S. 511, 515, 516 (1955). Moreover, since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their Courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in State Court should be allowed to continue unimpaired by intervention of the local Federal Courts, with relief from error, if any, through the State Appellate Courts and ultimately, the United States Supreme Court.

The United States District Court and the Third Circuit Court of Appeals interfered with the constitutional independence of the State and its' citizens. The permanent injunction issued by the Court does not satisfy any of the specifically defined exceptions pursuant to 28 U.S.C.A 2283. The issue of spoliation of evidence against the County of Hudson was never previously decided by the Federal Court. The defendants in the State Court proceeding simply circumvented the decision by the State Court and a Federal Court of competent jurisdiction to get the results they wanted, a very dangerous precedent that must be rejected by this Court.

No Findings of Fact

The United States District Court did not make

any findings of fact concerning evidence of a Federal decision on the allegation against the County of Hudson for spoliation of evidence during civil action 00-591. The obvious reason is that there is no evidence. A review of the opinion issued on January 31, 2001, under docket number 00-591, clearly demonstrates this. The District Court scheduled a Show Cause hearing on November 28, 2005 to determine whether it would issue a permanent injunction enjoining the petitioners from pursuing the spoliation of evidence claim against the County of Hudson in New Jerseys' Superior Court pursuant to the relitigation exception to the Anti-Injunction Act. The petitioners argued that there was absolutely no evidence to indicate that the Federal Court previously decided this allegation. (H). The Court issued the injunction anyway (E). The Court did so without even addressing the allegation of spoliation of evidence issue. Because there was no evidence to support its decision, the Court ignored the issue and made no findings of fact.

The United States District Court must make findings of fact in accordance with Fed R Civ P 52. "In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specifically and state separately its conclusions of law therein, and judgment shall be entered pursuant to rule 58; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds for its actions... [emphasis supplied] Fed R Civ P 52.

Because the District Court did not make any findings of fact in its January 4, 2006 opinion/order, the petitioners modified the State Court complaint and filed for leave to amend it. The petitioners left only the spoliation of evidence claim against Hudson County during civil action 00-591 in it.

Once again, the defendants petitioned the United States District Court for relief. This time they asked the Court to hold the petitioners in contempt for violating the January 4, 2006 order. A preliminary hearing was held on May 18, 2006 (1). During the hearing, the petitioners argued that the spoliation of evidence claim filed in State Court had never been decided in a Federal Court. The Court scheduled a Show Cause hearing anyway. The hearing was scheduled for June 22, 2006 (J). During the hearing, the petitioners advanced their arguments in detail with supporting evidenc 8 There was no question that the spoliation of evidence claim against Hudson County had never been previously decided. Despite the undisputed evidence, the Court found the petitioners to be in contempt of the January 4, 2006 order (C). The opinion issued on July 10, 2006 did not indicate that the spoliation of evidence claim was previously decided by a Federal Court once again. The Court refused to make any findings of fact on this issue.

In all cases heard in the State of New Jersey, the trial Court is obliged to state clearly its factual findings and correlate them with the relevant legal conclusions. Kenwood Assoc. v Bd of Adj of Englewood, 141 N.J. Super 1 (App Div 1976); State v Singletary, 165 N.J. Super 421, 424-25 (App Div),

Certif Denied, 81 N.J.50 (1979); Wertlake v Wertlake, 137 N.J. Super 476, 485-86 (App Div 1975) Blaisdell Lumber Co v Holton, 242 N.J. Super 98, 102 (App Div 1990). The District Court did not make findings of fact because there is no evidence to support its opinion that the spoliation of evidence claim in New Jersey's Superior Court was previously decided in Federal Court.

The opinion issued on January 31, 2001, during civil action 00-591 by Judge William Bassler, speaks volumes (F). The District Court was obliged to review it prior to making a determination. There can be no Federal injunction against State Court proceedings based on a claim preclusive or issue preclusive effect of a Federal judgment has actually decided the claim or issue in question. It requires an assessment of the precise state of the record and of what the earlier opinion/order actually said" Wright, Miller, Cooper, Federal Practice and Procedures 4226 (Supp 1997). The Court could not have conducted the required assessment since it is abundantly clear that the issue and claim was never previously decided.

The District Court failed to articulate its findings of fact and correlate them with relevant legal conclusions. Curtis v Finnerman, 83 N.J. 563, 570 (1980); See also Brochin & Sandler, Appellate Review of Facts in New Jersey Jury and New Jersey Cases, 12 Rutgers Law Rev 482 (1947), Conford, Findings of Fact and Conclusions of Law, 92 N.J.L.J. (1969).

At the time the District Court issued its contempt order on July 10, 2006, the petitioners' 12

appeal of the January 4, 2006 order was still pending in the Third Circuit. A briefing schedule had not been ordered. The petitioners filed a motion with the Appellate Clerk to amend the appeal to include the July 10, 2006 order. The Clerk denied the motion because the orders were not related. The petitioners filed a motion to have the decision reviewed by the panel.

The petitioners filed the briefs on appeal in the Third Circuit. Among other things, the petitioners argued that the District Court did not make any findings of fact on the issue of spoliation of evidence during civil action 00-591. They argued that the District Court did not have any evidence to indicate that this issue was previously decided by the Federal Court and they argued that the District Court did not conduct an assessment of the earlier opinion/order as required. Wright, Miller, Cooper, Federal Practice and Procedure, 4226 (Supp 1997).

The Appellate Court issued its decision on June 19, 2007. It affirmed the decision of the District Court issued on January 4, 2006. It refused to review the appeal of the order issued on July 10, 2006. The Appellate Court did not even address the District Courts' failure to make findings of fact on the main issue in this case (B).

In response, the petitioners filed a motion for an en banc hearing. The Court did not allow the re-hearing (A).

It is for this precise reason that the District Court is required to make findings of fact. The District Court simply ignored the petitioners' arguments that the claim against Hudson County in New Jersey's Superior Court was never decided

in the Federal Courts, and then issued a permanent injunction under the pretense that the issue was previously decided by the Federal Court.

The petitioners ask this Court to remand this order back to the United States District Court for the District of New Jersey and assigned to Judge William Bassler, the Judge that issued the original opinion and order in civil action 00-591. The petitioners ask this Court to remand this matter back to this Court with instructions. The Court should be required to indicate by reference, when the issue of spoliation of evidence against Hudson County was decided during civil action 00-591. The petitioners allege that the County of Hudson ordered its corporate counsel to withhold evidence and misrepresent himself to a judge during civil action 00-591. The final order in this matter was issued on January 31, 2001 (F). The evidence supporting this claim did not surface until 2005. It is axiomatic that the issue was never decided by the Federal Courts. The Courts should not be allowed to ignore arguments in order to avoid making unpopular decisions. Such notions compromise the integrity of our judicial system, and this could have serious implications to the trust that citizens have for our Courts.

Did The Permanent Injunction Issued by the District Court Violate Petitioners' Right To Due Process in New Jersey's Superior Court?

The petitioners have already demonstrated that the allegation of spoliation of evidence was never previously decided during civil action 00-591 (F 1-

13). They have also demonstrated that the District Court issued two separate orders suggesting that this issue was previously decided (E-C). However, the opinion does not disclose how the Court reaches this position (E-C). On the other hand, the petitioners presented numerous documents during evidentiary hearings to establish that this claim was never previously litigated in Federal Court (H-I). The Court issued its permanent injunction without making any findings of fact on the spoliation of evidence issue (E). It issued its contempt order without making any findings of fact on the spoliation of evidence issue (C). The Court simply ignored the issue presented by petitioners as though it was never discussed. There is absolutely no evidence in this case to indicate that the Federal Court previously decided the spoliation of evidence claim against Hudson County during civil action 00-591. In fact, the County of Hudson was not named in the case under docket 00-591. The relitigation exception only allows Federal Courts to enjoin issues of claims that were previously decided in a Federal Court. Texas Commerce Bank Nat'l Assn v Florida, 138 F 3d 179, 182 (5th Cir 1998); quoting Chick Kam Choo, 486 ct 146. The claim of spoliation of evidence was never decided by the Federal Courts.

The petitioners obtained the information supporting this claim through depositions conducted in July and September of 2005. The final order under docket number 0-591 was issued on January 31, 2001 (F). The petitioners could not have filed a complaint alleging spoliation of evidence in the Federal Court since the Federal

Court does not recognize spoliation of evidence as a separate tort if detected after the final judgment has been entered and time has lapsed. Kalanovic v Gida, 77 Supp 2d 595, 601 (D.N.J. 1999). Where as the State of New Jersey allows a party to allege spoliation of evidence as a separate tort if it is maintained under the allegation of fraudulent concealment. Rosenblitt v Zimmerman, 166-N.J.-391 (2001).

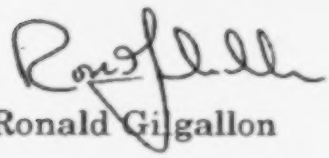
The petitioners filed a complaint against the County of Hudson in New Jersey's Superior Court alleging spoliation of evidence. The complaint withstood a motion for summary judgment. The District Court stopped petitioners from pursuing this claim in New Jersey's Superior Court under false pretense. The petitioners had a right to be heard. The District Court denied petitioners this right. Due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v Eldridge, 424 U.S. 319, 333, 96 S Ct 893, 902 (1976); Armstrong v Manzo, 380 U.S. 545, 552, 85 S. Ct 1187, 1191 (1965).

The permanent injunction issued by the District Court denied petitioners this most basic right.

CONCLUSION

For all the reasons indicated above, the petition for a writ of centiorari should be granted.

Respectfully submitted,



Ronald Gilgallon

Eileen Gilgallon
October 23, 2007